

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 04, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WILLIAM ROBERT and JULIE L.  
FAYANT,

Plaintiffs,

v.

US BANCORP, DBA U.S. BANK  
NATIONAL ASSOCIATION, GUILD  
MORTGAGE, DBA. CHERRY CREEK  
MORTGAGE, FEDERAL HOME  
LOAN MORTGAGE CORPORATION,  
JOHN AND JANE DOE, ET AL.

Defendants.

No. 2:24-CV-00095-SAB

**ORDER GRANTING MOTIONS TO  
DISMISS AND CLOSING FILE**

Before the Court are Defendant U.S. Bank National Association's ("U.S. Bank") Motion to Dismiss, ECF No. 4, Federal Home Loan Mortgage Corporation's ("Freddie Mac") Motion to Dismiss, ECF No. 9, Plaintiffs' Motion for Summary Judgment, ECF No. 15, Plaintiff's Construed Motion to Remand, ECF No 16, and Guild Mortgage's Motion for Joinder to Motions to Dismiss, Rule 12(b)(2) Motion for Limited Dismissal of Guild, and Rule 21 Motion to Drop Guild Mortgage Company as a Party, ECF No. 17. Plaintiffs are representing themselves in this matter. Defendant U.S. Bank and Defendant Freddie Mac are represented by Jessica Andrade. Defendant Guild Mortgage is represented by

**ORDER DISMISSING CLAIMS; CLOSING THE FILE ~ 1**

1 Joseph T. McCormick, III and Spencer Rossini.

2 **Facts**

3 The facts underlying this case have been well-documented. In 2005 and 2006,  
4 Plaintiffs obtained loans from Cherry Creek Mortgage (“Cherry Creek”) and Washington  
5 Trust Bank. The Cherry Creek loan and relevant documents concerning the loan were  
6 subsequently endorsed and assigned to U.S. Bank. Plaintiffs used their home in Liberty  
7 Lake, Washington as collateral for the loans.

8 In 2015, Plaintiffs attempted to rescind the loans. They then proceeded to sue U.S.  
9 Bank and Cherry Creek in Spokane County Superior Court, asserting claims for (1) quiet  
10 title; (2) fraud in the concealment; (3) breach of contract; (4) violations of the Truth in  
11 Lending Act; (5) predatory lending; (6) violations of the Washington Consumer Protection  
12 Act; and (7) violations of the Washington Deed of Trust Act. Their theory was that their  
13 mortgage had been unlawfully sold, assigned and transferred and as a result, the lender no  
14 longer has ownership or security interest in the Liberty Lake house. Spokane County  
15 Superior Court dismissed all of Plaintiff’s claims with prejudice, with the exception of the  
16 claim for violations of the Washington Deed of Trust Act.

17 In 2016, Plaintiffs sued U.S. Bank, Cherry Creek Mortgage, and Washington Trust  
18 Bank in the Eastern District of Washington, alleging violations of the Truth in Lending  
19 Act and seeking injunctive relief. Plaintiffs were seeking to have the loans and notes  
20 encumbering their home cancelled and voided.

21 Judge Mendoza found that Plaintiffs failed to present a cognizable legal theory  
22 under the Truth in Lending Act because the record indicated the subject loans were  
23 consummated and rescission had been long unavailable to Plaintiffs. He dismissed their  
24 complaint with prejudice. The Ninth Circuit affirmed, finding that Plaintiffs’ claims were  
25 time-barred because they did not send a notice of recission to Defendant within three years  
26 of consummation of the loan. The Ninth Circuit rejected Plaintiffs’ assertions that the  
27 subject loan transaction was not consummated.

28 A few years later, Plaintiffs were then sued by U.S. Bank in Spokane County

**ORDER DISMISSING CLAIMS; CLOSING THE FILE ~ 2**

1 Superior Court to remove and cancel fraudulent rescission documents that had been  
 2 recorded by Plaintiffs. Spokane County Superior Court granted U.S. Bank's Motion for  
 3 Summary Judgment. Plaintiffs attempted to file counterclaims, which were ultimately  
 4 rejected. This suit was dismissed without prejudice on February 29, 2024. A week later,  
 5 Plaintiffs filed this instant action in Spokane County Superior Court. Defendants removed  
 6 the action to the Eastern District of Washington.

### 7 **Motion Standard**

8 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege "enough  
 9 facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550  
 10 U.S. 544, 570 (2007). A claim is plausible on its face when "the plaintiff pleads factual  
 11 content that allows the court to draw the reasonable inference that the defendant is liable for  
 12 the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As the Ninth Circuit  
 explained:

13 To be entitled to the presumption of truth, allegations in a complaint or  
 14 counterclaim may not simply recite the elements of a cause of action but must  
 15 contain sufficient allegations of underlying facts to give fair notice and to  
 16 enable the opposing party to defend itself effectively. The factual allegations  
 17 that are taken as true must plausibly suggest an entitlement to relief, such that  
 it is not unfair to require the opposing party to be subjected to the expense of  
 discovery and continued litigation.

18 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). When evaluating a Rule 12(b)(6) motion,  
 19 the court must draw all reasonable inferences in favor of the non-moving party. *Wolfe v.*  
 20 *Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). However, the court is not required to accept  
 21 conclusory allegations as true or to accept any unreasonable inferences in a complaint. *In re*  
 22 *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1054 (9th Cir. 2008).

### 23 **A. Defendants' Motions**

#### 24 **1. Defendant U.S. Bank's Motion to Dismiss**

25 Defendants assert Plaintiffs' Complaint alleges a host of non-sensical and ill-  
 26 conceived claims relating to a mortgage loan. It argues each claim fails as a matter of law  
 27 because (1) they are not grounded in any cognizable cause of action; (2) they are barred by  
 28 res judicata and collateral estoppel; (3) Plaintiffs failed to schedule any of the instant

1 claims in their collateral bankruptcy proceedings and are judicially estopped from  
2 asserting them now; (4) Plaintiffs' claims are time-barred; and (5) Plaintiffs' lack standing  
3 to assert claims arising from their challenges to the assignments of a deed of trust.

4 Plaintiffs did not file a response to Defendant U.S. Bank's Motion to Dismiss.

5 The Court agrees that Plaintiffs' claims are barred by res judicata and collateral  
6 estoppel. Plaintiffs have had three opportunities to fully and fairly litigate their claims  
7 relating to the Loan and purported irregularities in the serving and transfer of the Loan.  
8 Each time courts have dismissed their claims with prejudice. Plaintiffs have not only  
9 asserted claims in the instant action that could have been asserted in any of the three prior  
10 suits between it and U.S. Bank, but they have also asserted the exact same claims litigated  
11 and dismissed with prejudice.

12 The Court agrees that Plaintiffs' claims are time-barred under the applicable statute  
13 of limitations. Plaintiffs' claims for attempted wrongful foreclosure is not recognized  
14 under Washington law and any claim under the Deed of Trust Act is premature because no  
15 foreclosure has taken place. Finally, Plaintiffs have not demonstrated they have standing to  
16 challenge the assignment of the Loan. Any remaining claims are dismissed for failure to  
17 state a claim upon which relief can be granted.

## 18 **2. Defendant Freddie Mac's Motion to Dismiss**

19 Defendant Freddie Mac argues that Plaintiffs' claims should be dismissed because  
20 (1) they are barred by res judicata and/or collateral estoppel; and (2) they are time-barred.  
21 Plaintiff did not file a response to Defendant's motion.

22 For the same reasons as set forth above, the Court agrees.

## 23 **3. Defendant Guild Mortgage's Motion for Joinder to Motions to Dismiss,** 24 **Rule 12(b)(2) Motion for Limited Dismissal of Guild, and Rule 21 Motion to Drop** 25 **Guild Mortgage Company as a Party**

26 Defendant Guild Mortgage asks to join in pending Motions to Dismiss and also  
27 makes a separate argument that it and Cherry Creek are separate business entities and  
28 Guild has no relationship to Plaintiffs' loans or to the dispute under which this lawsuit

1 arises.

2 The Court agrees. The record demonstrates that Defendant Guild Mortgage is a  
3 separate business entity from Cherry Creek Mortgage and is not a proper party to this  
4 lawsuit.

5 **B. Plaintiffs' Motions**

6 In their Motion for Summary Judgment, Plaintiffs ask the Court to grant summary  
7 judgment due to the lack of response by Defendant Guild Mortgage. The Court declines to  
8 do so for two reasons: First, Defendant Guild Mortgage's counsel filed a Notice of  
9 Appearance on April 16, 2024. Second, as demonstrated in its Motion, Guild Mortgage is  
10 not a proper party to this action.

11 In their construed Motion to Remand, Plaintiffs correctly point out the certificates of  
12 service indicate that documents were mailed to the wrong address. What they fail to note,  
13 however, is that Defendants corrected this oversight. On April 15, 2024, Plaintiffs were  
14 served by First Class Mail and Certified Mail, Return Receipt Requested ECF Nos 1-10,  
15 which included the Notice of Removal and Defendants' Motions to Dismiss.

16 For the past ten years, Plaintiffs have been seeking unsuccessfully to avoid the  
17 mortgage debt that they encumbered nearly twenty years ago. Although leave to amend  
18 pleadings should be freely given, the Court finds that allowing Plaintiffs to file an  
19 Amended Complaint would be futile. Three prior courts have dismissed their same or  
20 similar claims with prejudice. Plaintiffs have not demonstrated any factual or legal basis to  
21 obtain the relief they are requesting. At best, it appears that Plaintiffs are using the court  
22 system to avoid the inevitable, which only serves to impede justice for others. The Court  
23 will not condone such behavior.

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Accordingly, **IT IS ORDERED:**

1. Defendant U.S. Bank's Motion to Dismiss, ECF No. 4, is **GRANTED**. The claims asserted against U.S. Bank are **dismissed with prejudice**.

2. Freddie Mac's Motion to Dismiss, ECF No. 9, is **GRANTED**. The claims asserted against Freddie Mac are **dismissed with prejudice**.

3. Defendant Guild Mortgage Company LLC's Motion for Joinder to Motions to Dismiss by U.S. Bank National Association and Federal Home Loan Mortgage Corporation, Rule 12(b)(6) Motion for Limited Dismissal of Guild, and Rule 21 Motion to Drop Guild Mortgage Company, as a Party, ECF No. 17, is **GRANTED**. The claims asserted against Defendant Guild Mortgage are **dismissed with prejudice**.

4. All remaining claims are **dismissed** with prejudice for failure to state a claim.

5. Plaintiff's Construed Motion to Remand, ECF No. 16, is **DENIED**.

6. Plaintiff's Motion for Summary Judgment, ECF No. 15, is **DENIED**.

**IT IS SO ORDERED.** The District Court Executive is directed to file this Order, provide copies to counsel, and **CLOSE** the file.

**DATED** this 4th day of June 2024.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
Chief United States District Judge